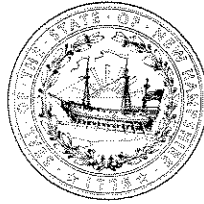


**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

September 30, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 655:2, a STATUTE related to domicile, most recently amended by Laws of 2001 Chapter 118.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973(c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 655:2, a STATUTE related to domicile, most recently amended by Laws of 2001 Chapter 118.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 118 (2001) amending RSA 655:2 is attached (Exhibit 655:2 A).
- b) Chapter 436 (1979) enacting RSA 655:2 is attached (Exhibit 655:2 B). This change to the law has been precleared and is provided solely for the purpose of establishing the baseline against which comparison of the 2001 change is to be made.
- c) The changes made by amendments to RSA 655:2 are as follows:

1. Chapter 118 (2001) inserts the sentence *“Registration to vote or voting in another state during the relevant time period shall create a presumption that a person does not have a domicile in this state”* in this statute
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State’s legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 118 (Exhibit 655:2 A). The bill was signed into law (by the Governor) on June 26, 2001, pursuant to New Hampshire Constitution Part Second, Article 44.

- i) Adoption dates:

Chapter 118 (2001) adopted June 26, 2001

- j) Effective dates:

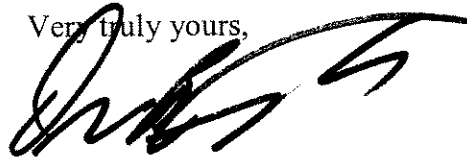
1. Chapter 118 (2001) effective August 25, 2001

- k) The changes have been enforced.
- l) The changes affect the entire State of New Hampshire.
- m) The purpose for the changes are as follows:

1. The purpose of the Chapter 118 (2001) change is to establish that registering to vote or voting in another state will create a presumption that the person does not have a domicile in New Hampshire. This change was in response to a Ballot Law Commission decision which found a candidate satisfied a duration residency requirement during a period when that person was voting in another state, because that state's law did not require domicile as a condition for eligibility to vote.
-
- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. 42 U.S.C. 1973(c). They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 478 (1997). "(T)he ability of minority groups...to elect their choices to office" will not be diminished. *Beer v. U.S.*, 425 U.S. 130, 141 (1976).
 - o) None known.
 - p) RSA 655:2 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 655:2 D. This submission seeks preclearance of all subsequent changes.
 - q) Not applicable as this is not a redistricting plan.
 - r) Exhibit 655:2 C is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

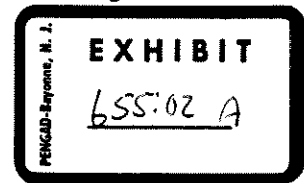
Very truly yours,



Orville B. Fitch II
Senior Assistant Attorney General
Civil Bureau
(603) 271-1238
bud.fitch@doj.nh.gov

95386.doc

CHAPTER 118
HB 520 - FINAL VERSION



25apr01...0599h

2001 SESSION

01-0887

03/10

HOUSE BILL **520**

AN ACT relative to clarifying qualifications of candidates.

SPONSORS: Rep. Kennedy, Merr 7

COMMITTEE: Election Law

ANALYSIS

This bill clarifies the requirement that a person have a domicile in the state to hold elective office in the state by providing that registration to vote or voting in another state shall create a presumption that a person does not have a domicile in this state.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

25apr01...0599h

01-0887

03/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT relative to clarifying qualifications of candidates.

Be it Enacted by the Senate and House of Representatives in General Court convened:

118:1 Nominations; General Qualifications; Domicile. Amend RSA 655:2 to read as follows:

655:2 Domicile. To hold any elective office in the state, a person must have a domicile in the state. ***Registration to vote or voting in another state during the relevant time period shall create a presumption that a person does not have a domicile in this state.***

118:2 Effective Date. This act shall take effect 60 days after its passage.

(Approved: June 26, 2001)

(Effective Date: August 25, 2001)

position as a member of the general court and county commissioner at the same time. No person shall hold 2 of the offices mentioned in RSA 655:9 at the same time, and the acceptance of one of them shall be a resignation of the others.

Nominations by Primary

655:11 Notice to Town and City Clerks. At least 100 days before the time of holding any primary, the secretary of state shall prepare and distribute to each town and city clerk in the state a notice in writing designating the offices for which candidates are to be nominated and that delegates to the state convention are to be elected.

655:12 Posting Notice of Primary. Each city clerk shall distribute such notices to the ward clerks in his city. Each town and ward clerk shall, within 10 days after the receipt of such notice, cause notice of such primary to be posted in 2 public places in his town or ward. Such notice shall prescribe the hour the polls are to open and the hour before which they may not close as provided in RSA 659. It shall state the offices for which candidates are to be nominated, the delegates to be elected, and any questions to be voted on, as well as the location of the central polling place and of any additional polling places. It shall also state the date before which declarations of candidacy must be filed to place names upon the ballots to be used at such primary, the officers with whom they must be filed, the fees to be paid at the time of filing such papers and the number of primary petitions which may be submitted in lieu of the filing fees.

655:13 Forms and Directions. It shall be the duty of the secretary of state to prepare all forms necessary to carry out the provisions of this chapter and to furnish the same in reasonable quantities to the proper officials. It shall also be his duty to furnish full directions to the clerks of towns and wards when he sends them the notice provided for in RSA 655:11 as to the posting of notices, holding of primaries and making return thereof.

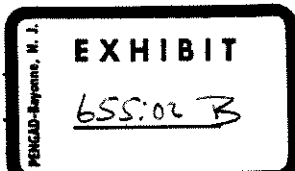
655:14 Filing: General Provisions. The name of any person shall not be printed upon the ballot of any party for a primary unless he is a registered member of that party, he will have met the age and domicile qualifications for the office he seeks at the time of the general election and meets all the other qualifications at the time of filing; and, not more than 96 days nor less than 75 days prior to the primary, he shall file with the appropriate official a declaration of candidacy as provided in RSA 655:17, and

I. The appropriate filing fee as provided in RSA 655:19; or
II. The appropriate number of primary petitions as provided in RSA 655:20 and 655:22 and an assent to candidacy as provided in RSA 655:25.

655:15 Official With Whom to File. For the purposes of this chapter, the term "appropriate official" shall be defined as follows:

I. For the offices of governor, United States senator, representative, Congress, counselor, state senator and county office, the secretary or ward and for delegate to a state party convention, the clerk of city in which the officer is to be chosen.

II. For state representative in a representative district containing more than one town or ward, the clerk of the city or town in which the person filing is domiciled; or, if the person is domiciled in an unincorporated town, the town clerk of the town designated by the secretary of state for as provided in RSA 668.



II. Shall neglect or refuse to insert on the list the name of any person who is a legal voter; or

III. Shall neglect or refuse to hear or examine any evidence offered for such purpose in either of these cases under paragraph I and II; or

IV. Shall at any time knowingly insert on the list the name of any person not a legal voter; or

V. Shall knowingly strike out therefrom or omit to insert the name of any legal voter.

CHAPTER 655 NOMINATIONS

General Qualifications

655:1 Citizenship. To hold any elective office in the state, a person must be a citizen of the United States, either by birth or by naturalization.

655:2 Domicile. To hold any elective office in the state, a person must have a domicile in the state.

Qualifications by Office

655:3 United States Senator. To hold the office of United States senator, a person must be qualified as provided in Article 1, section 3 of the federal constitution.

655:4 United States Representative. To hold the office of United States representative, a person must be qualified as required by Article 1, section 2 of the federal constitution.

655:5 Governor. To hold the office of governor, a person must be qualified as provided in Part 2, Article 42 of the state constitution.

655:6 Councilor. To hold the office of councilor, a person must be qualified as provided in Part 2, Article 61 of the state constitution.

655:7 State Senator. To hold the office of state senator, a person must be qualified as provided in Part 2, Article 29 of the state constitution.

655:8 State Representative. To hold the office of state representative, a person must be at least 18 years of age and must be qualified as provided in Part 2, Article 14 of the state constitution.

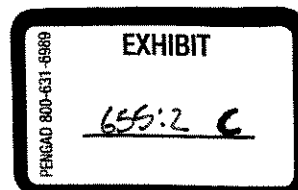
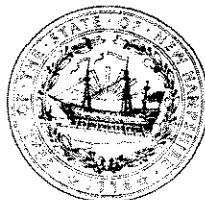
655:9 County Officers. To hold the office of county commissioner, sheriff, county attorney, county treasurer, register of deeds, or register of probate, a person must have a domicile in the county for which he is chosen. In addition, to hold the office of county commissioner in the counties of Rockingham, Belknap, Grafton, Merrimack, Hillsborough, Cheshire, Sullivan, Coos, and Carroll, a person must have a domicile in the district from which he is elected at the time of his election.

655:10 Incompatible Offices. No person shall file declaration of candidacy or primary petitions for nomination at the primary for incompatible offices. For the purposes of this section incompatible offices shall include the offices of governor, representative to the general court, state senator and councilor. If any person shall file for such incompatible offices, the secretary of state shall advise the person of the provisions hereof and said person shall then advise the secretary of state which of said offices he wishes to retain in order to seek said nomination. If a filing fee has been paid for a declaration of candidacy which he declines the fee shall be returned to him. No person shall seek or hold the

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MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov



U.S. Department of Justice

Civil Rights Division

PENGAD 800-631-6899

EXHIBIT

655:02 D

JDR:RPL:SMC:jdh
DJ 166-012-3
2004-2563
2004-2581
2004-2582

Voting Section - NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

June 22, 2004

Orville B. Fitch II, Esq.
Assistant Attorney General
Civil Bureau
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

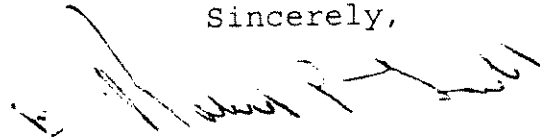
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph D. Rich", is written over a horizontal line.

Joseph D. Rich
Chief, Voting Section